



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

February 4, 2020

Colonel Andrew Kelly
District Commander - Jacksonville District
U.S. Army Corps of Engineers
701 San Marco Blvd.
Jacksonville, Florida 32207

Subject: Letter of Support for the Lake Okeechobee Watershed Restoration Project

Dear Colonel Kelly:

The purpose of this letter is to express the South Florida Water Management District's (District) support for advancing the Lake Okeechobee Watershed Restoration Project (LOWRP) for congressional authorization. While the District supports authorization of this Comprehensive Everglades Restoration Plan (CERP) project, our top priorities for the future allocation of appropriations remain the continued construction of the C-44 and C-43 West reservoirs, and expedited design and construction of the Everglades Agricultural Area (EAA) Reservoir and Stormwater Treatment Area (STA) as part of the Central Everglades Planning Project. The U.S. Army Corps of Engineers (USACE) previously committed to finish its review of the EAA Reservoir Project and issue necessary permits to the District to start construction in May of 2020. The District urges you to beat your deadline as the District stands ready to start construction of the STA component.

The LOWRP Recommended Plan increases water storage capacity in the watershed to improve Lake Okeechobee water levels, reduces the quantity and improves timing of regulatory discharges to the Caloosahatchee and St. Lucie estuaries, restores freshwater wetlands, and enhances water supply. However, the public and the Seminole Tribe of Florida continue to raise concerns with the uncertainties surrounding Aquifer Storage and Recovery (ASR) and the location and operations of the Wetland Attenuation Feature (WAF).

Moving forward with construction and operation of ASR storage features must be done using a systematic approach. The District maintains that moving forward with the storage benefits associated with the Aquifer Storage and Recovery (ASR) system must be conducted utilizing the Review of the Everglades Aquifer Storage and Recovery Regional Study (2015) by the National Research Council of the National Academies' Committee on Independent Scientific Review of Everglades Restoration Progress (CISRERP).

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The WAF is the only above ground storage feature associated with the Plan and concerns continue to be raised by the Seminole Tribe of Florida. A dam safety evaluation was conducted for the WAF and concluded that a deep reservoir had unacceptably high risk to human health and safety. The District concurs with this finding which resulted in recommending a shallow above ground storage feature that should never be converted to a deep reservoir. Ecologically, we should continue to work together to design the WAF with a keen eye towards habitat changes that might result in the displacement of threatened and endangered species. As we develop an operations plan in the future, our agencies should strive to maintain a certain water level inside the WAF. Keeping soils inundated will prevent release of the phosphorus to Lake Okeechobee that might occur during dry out and re-flooding events. The USACE team must also continue to work through any trust responsibilities with the Tribal Nation adjacent to the project boundary, specifically associated with the WAF and any impacts to tribal cultural resources.

Recognizing the implementation factors raised above, the District voices our support for moving forward with LOWRP for congressional authorization. As requested, attached is a certification of financial capability that affirms our ability to satisfy the obligations of the non-federal sponsor, should a Project Partnership Agreement be executed by the parties. Also attached is a draft Pre-Partnership Credit Agreement for your consideration since the State has already appropriated \$50 million to the project. The District is proud to partner with the USACE and looks forward to receiving our permits to begin construction of the EAA Reservoir and STA.

Sincerely,



Drew Bartlett
Executive Director
DB/mj

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR DECISION DOCUMENTS**

I, Candida Heater, do hereby certify that I am the Director for Administrative Services Division of the South Florida Water Management District (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Lake Okeechobee Watershed Restoration Project Final Integrated Project Implementation Report and Environmental Impact Statement; and that the Non-Federal Sponsor will have the financial capability to satisfy the Non-Federal Sponsor's obligations for that project. I understand that the Government's acceptance of this self-certification shall not be construed as obligating either the Government or the Non-Federal Sponsor to implement a project.

IN WITNESS WHEREOF, I have made and executed this certification this 4 day of February, 2020.

BY: Candida Heater

TITLE: Director, Administrative Services Division

DATE: February 4, 2020

**COMPREHENSIVE EVERGLADES RESTORATION PLAN
PRE-PARTNERSHIP CREDIT AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
FOR WORK CARRIED OUT
FOR
THE LAKE OKEECHOBEE WATERSHED RESTORATION PROJECT**

THIS AGREEMENT is entered into this _____ day of _____, 20____, by and between the Department of the Army (hereinafter the "Government") represented by the U.S. Army Engineer, Jacksonville District (hereinafter the "District Engineer, Jacksonville District (hereinafter "District Engineer") and the South Florida Water Management District (hereinafter the "Non-Federal Interest") represented by the Executive Director.

WITNESSETH THAT:

WHEREAS, the Non-Federal Interest proposes to perform certain work (hereinafter "the Proposed Work", as defined in Paragraph 1 of this Agreement) prior to the execution of a Project Partnership Agreement for the construction of the environmental restoration at the Lake Okeechobee Watershed Restoration Project; and

WHEREAS, Section 601(e)(5)(B) of the Water Resources Development Act of 2000, as amended by Section 6004 of the Water Resources Development Act of 2007, provides that the Secretary of the Army may provide credit toward the non-Federal share for the reasonable cost of any work performed in connection with a project that is necessary for the implementation of the Comprehensive Everglades Restoration Plan, including work completed in the period of design or period of construction, as well as work carried out before the date of a Project Partnership Agreement for a project, to include work carried out prior to a project being authorized by Congress, if such work is carried out pursuant to terms and conditions specified in an agreement between the Non-Federal Interest and the Assistant Secretary of the Army.

NOW, THEREFORE, the Government and the Non-Federal Interest agree as follows:

1. The Non-Federal Interest proposes to carry out the Proposed Work in accordance with the terms and conditions of this Agreement. The Proposed Work shall consist of the following features, as generally described in the Lake Okeechobee Watershed Restoration Project Revised Draft Integrated Project Implementation Report and Environmental Impact Statement, dated July 2019.

The Proposed Work includes:

- a. The following 5 million gallons per day per well Aquifer Storage and Recovery (ASR) locations:
 - i. ASR wells co-located with the WAF: These wells can withdraw water from the WAF when it is full, thus providing additional storage capacity in the WAF. There are three well clusters (25 wells) co-located with the WAF.
 - ii. Watershed ASR wells: The remaining 55 ASR wells are located throughout the watershed in several clusters.
 - a. One proposed cluster is located adjacent to the C-44 canal in Port Mayaca. This will discharge out of the C-44 into Lake Okeechobee or to the St. Lucie River Estuary.
 - b. Three potential cluster areas are located in the S-191 subwatershed. Some of the wells will be adjacent to the L-63N canal and the rest will be adjacent to the L-63S canal. These will allow flow into the lake at the S-191 structure.
 - c. Two potential clusters are located adjacent to the C-38 canal downstream of S-65E that discharge back into the C-38 canal.
 - d. One cluster is located along Taylor Creek, downstream of S-192 and upstream of the S-133 pump station which releases fresh water to Lake Okeechobee.
 - e. There is a well cluster along C-40 canal downstream of S-72 that can discharge to Lake Okeechobee.
 - f. There is a well cluster along C-41 canal downstream of S-71 that can discharge to Lake Okeechobee.
 - g. There is a well cluster along the C-43 canal in Moore Haven that can discharge to Lake Okeechobee or the Caloosahatchee River.

ASR system implementation is phased to demonstrate that ASR is feasible at specific locations. ASR feasibility is defined during two phases of implementation: 1) aquifer testing of the exploratory boreholes and 2) monitoring of ASR system during operational testing.

- 1. Exploratory Boreholes: The ability of an aquifer to accept, store, and transmit water is defined by aquifer performance tests conducted in the exploratory borehole. If aquifer permeability is suitable for ASR, the exploratory borehole will be completed as an ASR well, and the feasibility evaluation will advance to the operational testing stage.
- 2. ASR System Monitoring During Operational Testing: Monitoring of the entire ASR system (wells plus surface facility) is required by several permits. Whenever an ASR system is in operation, monitoring of the physical and

geochemical characteristics of groundwater and surface water must occur as required by Underground Injection Control (UIC), Comprehensive Everglades Restoration Plan Regulation Act (CERPRA), and National Pollutant Discharge Elimination System (NPDES) permits for each facility. Monitoring programs produce the data needed to quantify recovery efficiency, to characterize water quality during each recharge-storage-recovery phase of an ASR cycle, and subsequently reduce uncertainties about ASR system performance. Additional monitoring beyond permit requirements may occur in response to specific uncertainties, for example those identified by the NRC. The AMMP (**Annex D**) describes responses to uncertainties in greater detail.

Watershed ASR systems will be the first to be designed and constructed to demonstrate ASR system performance at several locations. The proposed but not mandatory sequencing begins with the ASR systems in the Kissimmee River Basin (C-38N and C-38S) and Taylor Creek/Nubbin Slough Basin (L-63N). These locations have existing infrastructure that can be utilized and will avoid impacts to tribal areas. ASR system performance will be established during successive cycle tests as prescribed in the UIC permit for each facility. ASR system operations are feasible if the target recovery efficiency values are achieved, no deleterious water quality changes occur, no impacts to surface or subsurface resources are identified, and the physical plant of the ASR system performs as designed. If ASR system operations are feasible at the initial locations, design and construction of additional ASR systems will proceed at Indian Prairie, Moore Haven, Port Mayaca, and the K-05 WAF.

b. Wetland Restoration Sites

- i. Paradise Run Wetland Restoration Site:
 - a. Construction of a 200 cfs inflow pump station (S-721);
 - b. Construction of a 100 cfs outlet riser culvert (S-732);
 - c. Construction of a 50 cfs culvert (S-730) and a 200 cfs culvert (S-729);
 - d. Excavation of 24,500 linear feet of channel;
 - e. Associated electrical power upgrades and telemetry;
 - f. Construction of stilling wells for pump station and culverts; and
 - g. Construction of an embankment.
- ii. Kissimmee River Center Wetland Restoration Site:
 - a. Construction of a 100 cfs inflow pump (S-735);
 - b. Construction of a 75 cfs outlet riser culvert (S-736);
 - c. Excavation of 21,500 linear feet of channel;
 - d. Associated electrical power upgrades and telemetry; and

- e. Construction of stilling wells for pump station and culverts.
2. The Non-Federal Interest shall complete all necessary environmental coordination and obtain all applicable Federal, State, and local permits required for the performance of any Proposed Work it carries out.
3. Any costs incurred for the cleanup of hazardous material regulated by the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"; 42 U.S.C. Sections 9601-9675), that may exist in, on, or under lands, easements, or rights-of-way required for the Proposed Work are a Non-Federal Interest responsibility. No credit shall be afforded for such clean-up costs unless otherwise provided for in the Project Partnership Agreement and consistent with Article II. A.1 of the Master Agreement.
4. As between the Government and the Non-Federal Interest, the Non-Federal Interest shall be considered the operator of the Proposed Work for the purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Interest shall operate, maintain, repair, replace, and rehabilitate the Proposed Work in a manner that will not cause liability to arise under CERCLA.
5. The Government may inspect any work performed under this Agreement. The Non-Federal Interest hereby gives the Government the right to enter, at reasonable times and in a reasonable manner, upon lands, easements, or rights-of-way which the Non-Federal Interest owns or controls for access to the Proposed Work for the purposes of inspection.
6. The parties to this Agreement shall each act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.
7. The Non-Federal Interest understands that to be eligible for credit for the costs of the Proposed Work:
 - a. The Assistant Secretary of the Army (Civil Works) must make a written determination that the Proposed Work is integral to the authorized project;
 - b. The Proposed Work must comply with applicable Federal design and construction standards and applicable Federal and State laws and regulations for construction of Federal public works projects, including, but not limited to, satisfactory compliance with:
 - i. Applicable Federal labor laws covering non-Federal construction such as 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*));
 - ii. the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*);
 - iii. the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c);

- iv. Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d);
- v. Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and
- vi. Applicable provisions of Chapter 373, Florida Statutes.
Credit will not necessarily be afforded for costs associated with compliance with state statutes and regulations.

- c. The Non-Federal Interest shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total costs for the Proposed Work and the Non-Federal Interest shall make such evidence available for inspection and audit by authorized representatives of the Government;
- d. Any contract awarded for the Proposed Work shall include provisions consistent with all applicable Federal and State laws and regulations;
- e. Except as otherwise provided by Section 601(e)(3) of the Water Resources Development Act of 2000, the Non-Federal Interest shall not use Federal funds for the Proposed Work unless the Federal granting agency verifies in writing that the expenditure of such funds for a non-Federal matching share is expressly authorized by statute; and
- f. The costs for the Proposed Work must be auditable, reasonable, allocable, allowable, and necessary, as determined by the Government.

8. The Non-Federal Interest understands that:

- a. Section 902 of the Water Resources Development Act, Public Law 99-662, as amended, establishes the maximum cost of the authorized project;
- b. The costs incurred for the Proposed Work are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the Proposed Work is completed and the time that credit may be afforded; and
- c. Any costs attributable to land management, any costs of clean-up of hazardous material regulated by the CERCLA (except as provided in paragraph 3), and any costs of operation, maintenance, replacement, repair, or rehabilitation of the Proposed Work incurred prior to execution of a Project Partnership Agreement are not eligible for credit.

9. If the parties agree to enter into a Project Partnership Agreement for the project, then the Project Partnership Agreement will contain provisions that allow for credit if the Secretary determines that the Proposed Work for which credit is sought is integral to the

authorized project and the terms and conditions required under the Pre-Partnership Credit Agreement have been met.

10. Nothing in this agreement creates any duty, obligation, commitment to, participation in, or responsibility for the planning, design or construction of the Proposed Work by the Corps. Any activity undertaken by Non-Federal Interest for implementation of the Proposed Work is solely at its risk and full responsibility. Any duty, obligation or responsibility for the Proposed Work by the Government will only arise if and when the Proposed Work is accepted by the Government as part of a Federal water resources development project through compliance with the terms of an executed Project Partnership Agreement providing for implementation of a Federal project.

11. Execution of this Agreement shall not:

- a. be relied upon as a promise of Federal approval for any project nor the inclusion of any of the Proposed Work as integral to a Federally authorized project;
- b. commit the United States to any type of reimbursement or credit for the Proposed Work;
- c. alter any process followed by the Government in determining the requirements or planning the design for the Federal project to achieve its Federal purposes;
- d. be construed as preventing the Government from modifying the Federal project or any portion of the Federal project that could result in the Proposed Work performed by the Non-Federal Interest no longer being integral to the Federal project;
- e. provide any assurance that a Project Partnership Agreement will ever be executed for the project, the Proposed Work, or any portion of the project; and
- f. be construed as committing the Government to assume any responsibility for the Proposed Work.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

BY: _____
Andrew D. Kelly
Colonel, U.S. Army
District Engineer

BY: _____
Drew Bartlett
Executive Director

Date: _____

Date: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the South Florida Water Management District, and that the South Florida Water Management District is a legally constituted public body with full authority and legal capability to perform the terms of this Comprehensive Everglades Restoration Plan Pre-Partnership Credit Agreement between the Department of the Army and the South Florida Water Management District in connection with the Proposed Work to be carried out prior to signing a Project Partnership Agreement for the Lake Okeechobee Watershed Restoration Project and that the persons who have executed this Agreement on behalf of the South Florida Water Management District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____ 20____.

Paula L. Cobb
General Counsel
South Florida Water Management District